April 6, 2018

Susan Braley, Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Revisions to Water Quality Policy 1-11

Dear Ms. Braley,

The Snoqualmie Tribe—sduk^{w}albix^{w} in our Native language—consists of a group of Coast Salish Native American peoples from the Puget Sound region of Washington State.

We have been in the Puget Sound region and the Snoqualmie Valley since time immemorial. sq^{w}ed (Snoqualmie Falls) is the birthplace of the sduk^{w}albix^{w}. We had more than 90 long houses along the Snoqualmie River and its tributaries. These rivers and streams were the highways used to travel from village to village and connected all the ʔaciłtalbix^{w} (Natives). The fish, game, trees and roots provided us with everything we need to live. All of this was given to us by duk^{w}ibeł (Transformer) in the ancient times when all of the animals could talk and before things were what they are now.

We are the sduk^{w}albix^{w}, People of the Moon. We are the descendants of słuk^{w}alb tə duk^{w}ibeł. We have lived, hunted and fished this area for as long as the earth and rivers remember. We are still here today; caring for the land, water, fish and game that duk^{w}ibeł gave us.

Long before the early explorers came to the Pacific Northwest, our people hunted deer and elk, fished for salmon, and gathered berries and wild plants for food and medicine. Today, many of our members live in the communities of Snoqualmie, North Bend, Fall City, Carnation, Issaquah, Mercer Island and Monroe.

Our Tribe was a signatory of the Point Elliott Treaty with the Washington territory in 1855. At that time, our people were one of the largest tribes in the Puget Sound region totaling around 4,000. We lost federal recognition in 1953, but after much battle, we regained federal recognition in October of 1999 by the Bureau of Indian Affairs. Today, the Snoqualmie Tribe is made up of approximately 650 members. The Snoqualmie Tribe is governed by an elected Council and our Tribal Constitution.

Water Quality Policy 1-11 directs Ecology on how to assess water quality data in order to meet federal Clean Water Act (CWA) obligations and to generate the 303(d) list by the EPA. Water quality standards under the CWA include numeric criteria, narrative criteria, waterbody uses, and anti-degradation requirements. The water quality Standard (WQS) from CWA are important the Snoqualmie Tribe to protect our water uses and prevent depletions and contamination of fisheries, aquatic organisms, aquatic habitat, and other treaty-protected resources.

Ecology's current draft policy increases the requirements for listing assessment units (AUs) as impaired for many pollutants while increasing the evidentiary requirements, which will result in fewer Category 5 listings. Ecology should introduce language that prevents clustering or spreading out data to hide periods of noncompliance for all parameters. ECY must ensure that water quality assessments reflect water conditions at critical time periods and prevent the erroneous delisting of Category 5 waters. Additionally downlisting from Cat 4A/4B is only appropriate when a TMDL or pollution control program has been completed for all parameters and has been approved by EPA.

The draft assessment benchmarks for carcinogens are considerably less protective than the previous water quality standards. This is problematic. Ecology would require tissue exposure concentrations for carcinogens (*TECc*) to exceed for a single species in 3 composite samples or for the majority composite samples to exceed *TECc*. The plan must allow for designating waters as impaired at the TECc contamination level and not require the fisheries to be in exceedance of carcinogenic levels of impairment and experiencing deleterious health effects before Ecology will apply protective measures. Moreover, the TEC_N does not account for the carcinogenic effect of the contaminants and must never be used in lieu of a *TECc*. The carcinogenic effects of these contaminants must be included in the "impairment" for waters not meeting the WQS.

The Snoqualmie Tribe supports the continuation of fish-tissue data as a basis for listing. Fish-tissue data directly measures bio-accumulative contaminants in the aquatic trophic system. Bioaccumulative contaminants are unlikely to reside in significant concentrations in the water column and are more likely to accumulate in sediments and aquatic organisms. The draft revision is focused on toxicity in fish in terms of human consumption rates, which while important, ignores the actual health of the fish population. The draft policy must ensure supportive conditions for fish at every stage in their lifecycles. If there's enough pollution getting into the ecosystem that the water is toxic to the fisheries, then it should be a strong signal to Ecology that the waters are impaired. Ecology should use fish-tissue data where it exists and especially where it indicates that a contamination problem exists, such as in the Snohomish basin.

These fish and their health are culturally important to the Snoqualmie people and whether consumed or not, they still represent a beneficial use of the water. Calculating contaminant concentrations in terms of water column concentrations fails to demonstrate issues with bio-magnification in the fish population. The presence of fish tissue contaminant concentration above levels of concern at any life stage should directly demonstrate impairment in the fish population and the water. For this reason Ecology must maintain their fish tissue analysis in water quality assessments in order to protect the designated uses for these waters from toxic contamination.

The juvenile salmon in the Snohomish Basin are already carrying toxic loads at levels that can have lethal and sub-lethal deleterious effects. According to James West from the WDFW: "Adult Chinook salmon from all locations in the Puget Sound drainage system, and juveniles from one basin, exceeded PCB thresholds. English sole from four urban locations failed to meet recovery targets (or showed uncertain results) for current conditions for most of the PCBs, PBDEs, PAHs and EDCs. CBs in herring from urbanized basins were above effects thresholds and not changing."

Additionally from the WDFW report *Toxic Contaminants in Juvenile Chinook Salmon (Oncorhynchus tshawytscha) Migrating Through Estuary, Nearshore and Offshore Habitats of Puget Sound*: "Levels of PCBs and PBDEs in whole body tissue samples from fish collected in the Snohomish, Green/Duwamish and Hylebos/Puyallup river systems, and PCBs in fish from the offshore habitat of the Whidbey Basin and the Central basin were high enough to potentially cause adverse effects, including reductions in growth, disease resistance, and altered hormone and protein levels."

The purpose of the state's 303(d) list is to restore health to impaired waters through development of TMDLs and other pollution control requirements. TMDLs were established to ensure that the level of contamination is held in control in order to protect the fisheries. If established populations are already carrying these concentrations in their flesh they are already compromised and additional pollution loads will only harm the population further. Tying the regulation of the impairment to the water column only, and excluding evidence of deleterious biological effects, does not necessarily tell the whole story. The water use being protected in these TMDLs are the fish. The concentration that really matter is the pollution load in the fish, not the water column or sediment, and while these may be the tracked sources for the pollution, the biological component of that water still carries the load, is still impaired, and needs to inform the potential listing.

Thank you for the opportunity to provide comments.

Sincerely,

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Reference:
West, J.E., S. M. O'Neil, J. Lanksbury, G M. Ylitalo, and S. Redman. 2011. Current conditions, time trends and recovery targets for toxic contaminants in Puget Sound fish: the Toxics in Fish Dashboard Indicator. Washington State Department of Fish and Wildlife/Puget Sound Partnership unpublished report. Olympia, WA. Vital signs website.

O'Neill, Sandra M., Andrea Carey, Jennifer Lanksbury, Laurie Niewolny, Gina Ylitalo, Lyndal Johnson, and James West. October 2015. Toxic contaminants in juvenile Chinook salmon (Oncorhynchus tshawytscha) migrating through estuary, nearshore and offshore habitats of Puget Sound. FPT 16-02. Washington State Department of Fish and Wildlife.